

Application No. 09/864,044
Amendment and Response to July 26, 2004 Office Action

REMARKS

Claims 1, 3-12, 22-30 and 32-43 are pending in the application. Applicant gratefully acknowledges the Examiner's statement that claims 1, 3-12, 22-25, 29, 30 and 32-43 are allowed.

Claim Rejections under 35 USC § 103(a)

Claims 26-28 are rejected as being unpatentable over US Patent No. 6,685,633 ("Albert").

Albert discloses that information about a patient's current biological functions and conditions can be transmitted to a medical care provider device through a communication network (col. 2, lines 13-20). For example, a device might monitor a patient's heart rate and report the rate to a computer at a doctor's office.

FIG. 3 of Albert discloses: (i) a computer 18 from which a program can be downloaded, (ii) a patient computer 10 to download and install the program, to use the program to sense a patient's current medical condition, and to transmit information about the patient's current medical condition via the Internet 4, and (iii) a doctor's computer 20 to receive the information about the patient's current medical condition via the Internet 4.

Claim 26 is directed to a controller adapted to "retrieve scheduling information from a medical care information device" and to "transmit the scheduling information to a remote patient device via a communication network." As noted in the Office Action, Albert does not disclose anything about scheduling information. According to the Office Action, however, "it would have been obvious ... to have the information [disclosed by Albert be] scheduling information ... because it is dependent on the intended use of the processor by the user."

Applicant respectfully does not understand this reasoning. While processors are certainly intended to be used to exchange information (including medical information), such a fact does not mean that a device adapted to exchange a particular type of information in a particular way cannot be patentable. That is, there is nothing in Albert suggesting that scheduling information

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might be transmitted to the patient computer 10 either when the patient computer downloads the sensing program or when the patient computer 10 transmits heart rate information to the doctor's computer 20. Nor would one of ordinary skill in the art think of such a feature in view of this reference. Thus, Applicant respectfully suggests that a *prima facie* case of obviousness has not been established as set forth in MPEP 211.02 (with respect to "intended use" in a preamble) or 2144.07 (selection of a known material based on its suitability for its "intended use").

Moreover, Albert completely fails to disclose or suggest the structure of the system recited in claim 26. In particular, claim 26 recites that scheduling information is received by the controller from "a medical care information device, the medical care information device being in communication with a medical care provider device." For example, the controller might receive the scheduling information from a database device that is also accessed by a doctor's computer. The controller then transmits the scheduling information "to a remote patient device via a communication network." Referring to FIG. 1 of the present application, both the controller 800 and the medical care provider device 120 (e.g., located in a doctor's office) may communicate with the medical care information device 110 (e.g., located at a hospital).

In Albert, a patient's computer 10 downloads a software program from a remote computer 18. The patient's computer 10 then executes the program to sense a patient's heartbeat (or other medical condition) and transmits information to the doctor's computer 20. That is, there is neither a controller nor a "medical care information device" in communication with both the controller and a medical care provider device as recited in this claim. Since Albert does not disclose or suggest such a structure, Applicant respectfully requests allowance of this claim.

Claims 27-28 depend from claim 26 and should be allowable for the same reasons.

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CONCLUSION

Accordingly, Applicant respectfully requests allowance of all pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (650) 694-5810.

Respectfully submitted,

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Date


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